

ESTTA Tracking number: **ESTTA559696**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206079
Party	Defendant 3P Learning Pty Limited
Correspondence Address	BARRY F SOALT PROCOPIO CORY ET AL 525 B ST STE 2200 SAN DIEGO, CA 92101-4474 UNITED STATES docketing@procopio.com
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Date	09/16/2013
Attachments	Answer Notice Opposition 91206079.pdf(556853 bytes )

Applicant.

ANSWER TO NOTICE OF OPPOSITION

## ANSWER TO NOTICE OF OPPOSITION

Applicant denies the allegations in the first introductory paragraph of the Notice of Opposition; denies that Opposer will be damaged by registration of Applicant's mark in the above pending application Serial No. 85/411,190. Nothing in the introductory paragraphs of the Notice of Opposition appear to be stated as grounds for the Notice of Opposition so as to require an admission or denial. With respect to the grounds alleged for the opposition, Applicant responds as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 1 of the Notice of Opposition, and on that basis denies the same.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 2 of the Notice of Opposition, and on that basis denies the same.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 3 of the Notice of Opposition, and on that basis denies the same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 4 of the Notice of Opposition, and on that basis denies the same.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 5 of the Notice of Opposition, and on that basis denies the same.

6. Applicant admits that it filed a U.S. application for registration of the MATHLETICS and Design mark in application Serial No. 85/411,190 and that the details of the application are recited therein, and Applicant denies the remaining allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations contained in Paragraph No. 7 of the Notice of Opposition.

8. Applicant denies the allegations of Paragraph No. 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in Paragraph No. 9 of the Notice of Opposition.

**AFFIRMATIVE DEFENSES**

10. Applicant is informed and believes, and thereon alleges that the facts set forth in the Notice of Opposition are insufficient to show damage necessary to oppose the subject matter application, and that the Notice of Opposition fails to state a claim upon which relief can be granted.

11. There is no likelihood of confusion between Opposer's ALTHETICS mark and registrations and the Applicant's MATHLETICS and Design mark and application, considering the marks themselves, the goods and services in connection with which they are used, the marketing channels of trade, and the plethora of third party registrations for the term ATHLETICS.

12. There is no likelihood of confusion, mistake or deception between the use and registration of the mark shown in Applicant's pending MATHLETICS and Design application Serial No. 85/411,190 for the services identified therein, and the Opposer's alleged use of MATHLETICS for the goods and services alleged. The marks of the respective parties are not confusingly similar, particularly when considering the distinctions between the alleged goods and services and the marketing channels of trade. Applicant alleges that no likelihood of confusion is created between the marks of the respective parties because the marks themselves are not confusingly similar; that Opposer's use of MATHLETICS is always affiliated with a distinctive logo signifying its relationship to professional baseball and the Oakland Athletics team; the goods or services of the parties are non-competitive and unrelated, and the goods and services of Opposer are offered in channels of trade remote from any usage by the Applicant.

13. Opposer does not have the exclusive right to use and/or register MATHLETICS, alone or in combination with other words or stylization, and no use or registration of ATHLETICS extends to use of MATHLETICS which is an independent mark.

14. Opposer's claims are barred by the doctrines of acquiescence, waiver, estoppel, unclean hands, and laches.

15. Opposer's failure to enforce its ATHLETICS mark and registrations has resulted in numerous third party registrations for related goods and services.

16. Opposer does not use its MATHLETICS or MATHLETICS and Design marks for related services.

17. Opposer has abandoned rights in the MATHLETICS or MATHLETICS and Design marks through non-use of the mark with the express or implied intent not to continue to use or by acts that caused the mark to lose its significance as an indication of origin.

WHEREFORE, Applicant prays that this Opposition be sustained in favor of Applicant; that Application Serial No. 85/411,190 be accepted for registration, and that registration be issued thereon to Applicant.

*Respectfully Submitted,*

Dated: September 16, 2013

By:



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Attorney Docket: 116344-10

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing ANSWER TO NOTICE OF OPPOSITION is being mailed on September 16, 2013, by First Class Mail to Opposer as follows:

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Richard S. Mandel, Esq.  
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Dated: September 16, 2013

By:   
Geena L. Jackson